



quality education. My staff and I look forward to working with Minnesota over the coming year.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. J. Tomalis". The signature is fluid and cursive, with the first name "R" and last name "Tomalis" being the most prominent parts.

Ronald J. Tomalis

Acting Assistant Secretary



THE SECRETARY OF EDUCATION  
WASHINGTON, DC 20202

April 22, 2005

Honorable Shirley Neeley  
Commissioner of Education  
Texas Education Agency  
William B. Travis Building  
1701 North Congress Avenue  
Austin, Texas 78701-1494

Dear Commissioner Neeley:

I am writing to follow up on former Secretary Paige's letter of January 19, 2005, in which he notified you of his intent to withhold four percent of Texas' fiscal year 2004 State administrative funds under Title I of the Elementary and Secondary Education Act (ESEA) for failing to provide schools and school districts timely assessment information and adequate yearly progress (AYP) decisions.

The Texas Education Agency (TEA) responded on February 10, 2005, in an effort to show cause why the Department should not withhold a portion of Texas' Title I administrative funds. TEA essentially identifies the U.S. Department of Education (ED) as the cause of TEA's failure to make timely AYP decisions. In support of its position, TEA cites the timing of the approval of amendments to the Texas Accountability Plan as well as the timing of publication of related ED policies and guidance. TEA also asserts that it believed, in good faith, that notifying schools of their AYP determinations by September 30 would be sufficient to meet the statute's requirement that schools be identified before school began, which, in Texas, occurred the week of August 16-20, 2004.

After careful consideration of TEA's submission, I have concluded that TEA has not shown cause why I should not withhold four percent of Texas' Title I State administrative funds for fiscal year 2004. In its response, TEA asserts that it could not make timely AYP determinations because ED did not respond, in a timely manner, to its amendment request or provide guidance on implementing the new regulations that permit a State to hold students with the most significant cognitive disabilities to alternate achievement standards and include their proficient scores in AYP decisions, subject to a 1.0 percent cap. ED's actions, however, did not cause TEA's late identifications.

For AYP decisions based on the 2003-04 assessments, TEA submitted an amendment to its accountability plan requesting permission to "hold harmless" schools and districts that did not make AYP because of the application of the 1.0 percent cap. The TEA's proposed amendment was not consistent with the law and the regulations and something

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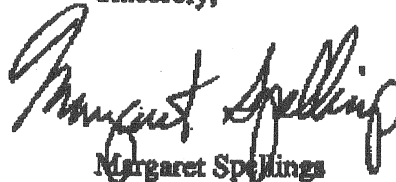
ED could not approve. Our negotiations between April and July were an effort to find a mutually agreeable solution.

At no time during those discussions was TEA led to believe that its amendment would be approved as proposed, and ED staff made clear to TEA that including the proficient scores of all students who took the alternate assessment would not be allowable. Moreover, I understand that Assistant Secretary Simon did not state that identifying schools for improvement by September 30 would be sufficient to avoid a withholding of State administrative funds.

Therefore, under section 1111(g)(2) of ESEA, I am withholding four percent of Texas' Title I State administrative funds for fiscal year 2004, which totals \$444,282. Under Texas' accountability plan, required by section 1111 of ESEA, TEA was required to provide decisions about AYP in time for schools to implement the required provisions of section 1116 before the beginning of the 2004-05 school year. TEA has not provided a sufficient justification for failing to do so.

I regret having to withhold a portion of Texas' Title I State administrative funds but I conclude that TEA's late identification of schools is a violation of the law for which TEA must be held accountable. I am heartened by TEA's recent commitment to ensure that this year's AYP decisions are timely. These actions will be important to the education of students in Texas so that no child is left behind.

Sincerely,

A handwritten signature in dark ink, appearing to read "Margaret Spellings", written in a cursive style.

Margaret Spellings